

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

GORDON SUTTON,

Plaintiff(s),

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,
Defendant(s).

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Case No. 4:04CV01623 ERW

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff's Amended Motion to Reconsider this Court's Order on Attorney's Fees [doc. #19].

On May 5, 2007, Plaintiff filed a Motion for Attorney Fees under the Equal Access to Justice Act (EAJA) and Sentence 6 Remand. On June 13, 2007, this Court granted Plaintiff judgment against Defendant, and remanded the case pursuant to sentence six. The Court also granted in part and denied in part Plaintiff's request for attorney's fees, and requested further briefing on the issue. The Court ordered Defendant to pay \$2,312.50 in attorney's fees and \$198.85 in costs. On August 2, 2007, this Court entered a second order on attorney's fees, granting Plaintiff \$3,324.25, and amending its June 13, 2007 order, by requiring Plaintiff's counsel to return to Plaintiff \$2,312.50, that was previously awarded.

While this Court was assessing Plaintiff's requests for attorney's fees, Plaintiff had simultaneously filed a request for an award of fees under 42 U.S.C. § 406(a) from the Administrative Law Judge (ALJ) that had presided over the case at the administrative level. Plaintiff's counsel subsequently received an award from the ALJ in the amount of \$4,400.00.

Plaintiff's counsel now seeks a modified order from this Court, in order to harmonize the two attorney fee awards. Defendant filed a response to Plaintiff's Amended Motion to Reconsider, in which it agreed that Plaintiff's counsel was entitled to an award of fees for both his representation of Plaintiff before this Court, and for his representation of Plaintiff before the ALJ. However, Defendant presented different dollar figures to which Plaintiff is entitled. Plaintiff's counsel then filed a reply brief, in which Plaintiff's counsel clarified its position, and agreed with the recommendation of Defendant.

Pursuant to 42 U.S.C. § 406, an attorney may request fees under both § 406(a) for services performed before the ALJ, and under § 406(b) for services performed before the district court. 42 U.S.C. § 406(a)(4) & (b)(1)(A). However, as this Court recognized in its prior order, Public Law No. 99-80 amended the EAJA to prohibit an award of attorney's fees under both sections, requiring that the smaller sum be returned to the claimant.

In the case at bar, the Commissioner withheld from Plaintiff's past due benefits, under both Title II and Title XVI, a total of \$6,522.25. The ALJ then awarded Plaintiff attorney's fees under § 401(a)(4) in the amount \$4,400.00. This Court awarded attorney's fees in the amount of \$3,324.25. Therefore, the aggregate amount awarded, \$7,724.25, is in excess of the amount withheld by the Commissioner, and in excess of the amount permitted by statute. Therefore, this Court will reduce the amount of attorney's fees awarded to \$2,122.25, in order to allow the total fees awarded to equal the amount withheld, \$6,522.25. Furthermore, the Court orders that the smaller of the two awards, in this case this Court's award of \$2,122.25, must be returned to the claimant. Pub. L. No. 99-80, § 3, 99 Stat. 186.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Amended Motion for Reconsideration [doc. #19] is **GRANTED**. This Court's August 2, 2007 order is amended to allow Plaintiff's Counsel attorney's fees in the amount of \$2,122.25.

IT IS FURTHER ORDERED that Plaintiff's counsel shall return this amount to the Plaintiff, in accordance with the Equal Access to Justice Act.

IT IS FURTHER ORDERED that Plaintiff's Motion for Reconsideration [doc. #18] is **DENIED as moot**.

Dated this 1st Day of October, 2007.

A handwritten signature in black ink, appearing to read "E. Richard Webber", is written over a horizontal line.

E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE